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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 TYRONE DAVID JAMES, SR.,

Case No. 2:18-cv-00900-KJD-GWF

10 Petitioner,

ORDER

11 v.

12 WILLIAMS, et al.,

13 Respondents.

14 Petitioner Tyrone David James, Sr. has submitted a 28 U.S.C. § 2254 habeas
15 corpus petition and has now paid the filing fee (see ECF Nos. 1-1, 5). The court has
16 reviewed the petition pursuant to Habeas Rule 4, and it shall be docketed and served
17 on respondents.

18 A petition for federal habeas corpus should include all claims for relief of which
19 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
20 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
21 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his
22 petition, he should notify the court of that as soon as possible, perhaps by means of a
23 motion to amend his petition to add the claim.

24 James has also filed a motion for appointment of counsel (ECF No. 2). There is
25 no constitutional right to appointed counsel for a federal habeas corpus proceeding.
26 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428
27 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v.*
28 *Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor*

1 v. *Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However,
2 counsel must be appointed if the complexities of the case are such that denial of
3 counsel would amount to a denial of due process, and where the petitioner is a person
4 of such limited education as to be incapable of fairly presenting his claims. See
5 *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970).
6 Here, James points out that he is serving a sentence of 25 years to life. However, his
7 petition clearly presents the issues that he wishes to raise, and the legal issues do not
8 appear to be particularly complex. Therefore, counsel is not justified. James' motion is
9 denied.

10 **IT IS THEREFORE ORDERED** that the Clerk **shall file and ELECTRONICALLY**
11 **SERVE** the petition (ECF No. 1-1) on the respondents.

12 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,
13 including potentially by motion to dismiss, within **90 days** of service of the petition, with
14 any requests for relief by petitioner by motion otherwise being subject to the normal
15 briefing schedule under the local rules. Any response filed shall comply with the
16 remaining provisions below, which are entered pursuant to Habeas Rule 5.

17 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
18 in this case shall be raised together in a single consolidated motion to dismiss. In other
19 words, the court does not wish to address any procedural defenses raised herein either
20 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
21 answer. Procedural defenses omitted from such motion to dismiss will be subject to
22 potential waiver. Respondents shall not file a response in this case that consolidates
23 their procedural defenses, if any, with their response on the merits, except pursuant to
24 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
25 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
26 do so within the single motion to dismiss not in the answer; and (b) they shall
27 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
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1 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
2 procedural defenses, including exhaustion, shall be included with the merits in an
3 answer. All procedural defenses, including exhaustion, instead must be raised by
4 motion to dismiss.

5 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
6 shall specifically cite to and address the applicable state court written decision and state
7 court record materials, if any, regarding each claim within the response as to that claim.

8 **IT IS FURTHER ORDERED** that petitioner shall have **45 days** from service of
9 the answer, motion to dismiss, or other response to file a reply or opposition, with any
10 other requests for relief by respondents by motion otherwise being subject to the normal
11 briefing schedule under the local rules.

12 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
13 herein by either petitioner or respondents shall be filed with a separate index of exhibits
14 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
15 be identified by the number or numbers of the exhibits in the attachment.

16 **IT IS FURTHER ORDERED** that the parties SHALL SEND paper courtesy copies
17 of all exhibits to Clerk of Court, Attn: Staff Attorney, 400 S. Virginia St., Reno, NV,
18 89501. Additionally, in the future, all parties shall provide courtesy copies of any
19 additional exhibits submitted to the court in this case, in the manner described above.

20 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
21 (ECF No. 2). The motion for appointment of counsel is **DENIED**.

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23 DATED: 19 October 2018.

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25 KENT J. DAWSON
26 UNITED STATES DISTRICT JUDGE
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